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SERVICE DATE - NOVEMBER 7, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 7X)

THE TEXAS NORTHEASTERN DIVISION, MID-MICHIGAN RAILROAD,
INC.–DISCONTINUANCE OF SERVICE EXEMPTION–IN GRAYSON COUNTY, TX

Docket No. AB-102 (Sub-No. 21X)¹

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY–ABANDONMENT EXEMPTION–
IN GRAYSON COUNTY, TX

Decided: November 6, 2003

In STB Docket No. AB-364 (Sub-No. 7X), the Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service to discontinue service over a 10.51-mile line of railroad between milepost 662.54 in Denison and milepost 673.05 in Sherman, in Grayson County, TX (the line). Notice of the exemption was served and published in the Federal Register on January 29, 2003 (68 FR 4542-43) (the January 2003 notice).

In Docket No. AB-102 (Sub-No. 21X), the Missouri-Kansas-Texas Railroad Company (MKT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service to abandon the line.² When the ICC authorized the line to be

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(b)(1) of ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by ICCTA. The decision in Docket No. AB-102 (Sub-No. 21X) relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903. Also, these proceedings are not consolidated. A single decision is being issued for administrative convenience.

² MKT operated the line until MKT merged into the Missouri Pacific Railroad Company (MP), now Union Pacific Railroad Company (UP). At the time of the merger, the ICC
(continued...)

abandoned, it imposed an historic preservation condition under section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), regarding two specifically named rail yards. See UP/MKT at 577.³

By letter filed on February 5, 2003, UP requests that the historic preservation condition be removed because: (1) the rail yards to which the condition referred are both located roughly two miles from the line; and (2) as far as it could determine, there was no request by the Texas Historical Commission (the State Historic Preservation Office or SHPO) that an historic condition covering the yards be imposed on this particular abandonment. UP thus asserts that the section 106 condition was erroneously imposed. The Board's Section of Environmental Analysis (SEA) reviewed the information provided by UP's letter and agreed that the section 106 condition was likely imposed in error. SEA therefore recommends that the section 106 condition be removed with respect to the line and that any decision removing that condition be served on the SHPO.

Accordingly, the proceeding in Docket No. AB-102 (Sub-No. 21X) will be reopened and the previously imposed historic preservation condition will be removed.

In its February 5, 2003 letter, UP contends that this former MKT line was abandoned in 1989 and attaches a notice to that effect that was filed with the ICC in 1989.⁴ In view of the highly unusual circumstances (the apparently erroneous imposition of the section 106 condition on the proposed abandonment of this particular line), UP's February 5, 2003 letter will be treated as a notice of consummation of abandonment and accepted. UP therefore no longer has a common carrier obligation for this line and TNER's filing, on April 30, 2003, of its notice of consummation in STB Docket No. AB-364 (Sub-No. 7X) extinguished the last remaining common carrier obligation for the line.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

²(...continued)

authorized MKT to abandon the line. See Union Pacific Corp. et al.—Cont.—MO-KS-TX Co. et al., 4 I.C.C.2d 409, 488-89 (1988) (UP/MKT).

³ The January 2003 notice stated that the section 106 condition remained outstanding.

⁴ UP requests that the Board correct a statement in the January 2003 notice in STB Docket No. AB-364 (Sub-No. 7X) that UP retains a common carrier obligation with respect to the line, and instead find that UP has no common carrier obligation as to the line.

It is ordered:

1. The proceeding in Docket No. AB-102 (Sub-No. 21X) is reopened.
2. Upon reconsideration, the section 106 condition imposed in Docket No. AB-102 (Sub-No. 21X) is removed.
3. This decision is effective on its date of service.
4. This decision will be served on the SHPO at: Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, TX 78711.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary